

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLEN STANLEY HARRISON,

Defendant-Appellant.

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UNPUBLISHED

August 9, 2005

No. 253245

Oakland Circuit Court

LC No. 2003-188525-FH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Glen Harrison appeals by right his jury conviction of first-degree child abuse<sup>1</sup> and his sentence of 12 to 30 years in prison. The trial court sentenced Harrison as a habitual offender.<sup>2</sup> We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

This case involves defendant's actions toward complainant, the three-year-old son of his live-in girlfriend. The injuries occurred when defendant's girlfriend left her children alone with defendant. Complainant sustained severe multiple lesions to his thighs and buttocks, and a broken finger, along with other bruises and scratches. Some of the wounds became infected, and complainant suffered scarring. Harrison maintained that the injuries were due to his attempts to discipline complainant.

II. Sentencing Challenge

A. Standard Of Review

We review the trial court's determination of the existence of a sentencing factor for clear error, and we will uphold those scoring decisions that are supported by any evidence in the record.<sup>3</sup>

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<sup>1</sup> MCL 750.136b(2).

<sup>2</sup> MCL 769.12.

<sup>3</sup> *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003), citing *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

## B. OV 7

First, Harrison argues that the trial court erred in scoring fifty points for Offense Variable (OV) 7,<sup>4</sup> aggravated physical abuse. We disagree. The extensive nature of complainant's injuries supports a finding of excessive brutality.<sup>5</sup> In addition, the evidence presented, including defendant's own trial testimony, supported a finding that the beatings were given on multiple occasions. Although Harrison maintained that he was attempting to discipline complainant for various transgressions, the repetitive nature of the injuries also supports a finding of sadism.<sup>6</sup> Harrison provides no support for his argument that his actions are somehow mitigated by the fact that a conviction for first-degree child abuse requires the victim to have suffered serious physical harm. We find no error in the trial court's scoring of OV 7.

## C. OV 10

Harrison also challenges the trial court's scoring of OV 10,<sup>7</sup> exploitation of vulnerable victim. Harrison argues that the scoring of ten points for OV 10 was inappropriate because, while he had a relationship with and authority over complainant, he did not exploit or manipulate complainant for unethical purposes.<sup>8</sup> Harrison maintains that, at most, his actions were motivated by temporary anger. However, complainant's grandmother testified that Harrison would not let her visit the children while her daughter was away. In this manner, Harrison manipulated both his relationship to complainant and complainant's young age to prevent discovery of his abuse. The attempt to prevent discovery could be readily considered a selfish or unethical purpose. We uphold the trial court's scoring of OV 10.

## III. Suppression Of Statement To Police

### A. Standard Of Review

We review the trial court's decision to admit or exclude evidence for an abuse of discretion.<sup>9</sup> The ultimate question of whether a person was in custody and thus entitled to *Miranda* warnings before interrogation is a mixed question of law and fact.<sup>10</sup> Absent clear error,

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<sup>4</sup> MCL 777.37.

<sup>5</sup> MCL 777.37(1)(a).

<sup>6</sup> MCL 777.37(3).

<sup>7</sup> MCL 777.40.

<sup>8</sup> MCL 777.40(3)(b).

<sup>9</sup> *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

<sup>10</sup> *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997).

we defer to any findings of fact by the trial court.<sup>11</sup> Harrison admits that no objection was raised below. Therefore, he must demonstrate plain error that affected his substantial rights.<sup>12</sup>

## B. Legal Standards

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. The prosecution may not use a custodial statement unless it demonstrates that prior to questioning, the accused was informed of his rights.<sup>13</sup> However, *Miranda* warnings are not required unless the accused is subject to a custodial interrogation. A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his freedom in a significant way.<sup>14</sup> To determine whether the person was in custody at the time of interrogation, we examine the totality of the circumstances to determine whether the accused reasonably believed that he was not free to leave.<sup>15</sup>

## C. Applying The Standards

Harrison argues that the trial court erred by failing to suppress oral and written statements he provided to the investigating police officers when they first arrived at his home in response to a complaint by complainant's aunt. The statements were made after initial questioning by the officers but before defendant's arrest. Although any interview conducted by a police officer has a certain coercive aspect to it, *Miranda* warnings are not required every time a police officer asks questions of a person.<sup>16</sup> In this case, the officers questioned Harrison at his own home. Questioning that occurs at a suspect's home is generally viewed as noncustodial.<sup>17</sup> According to the testimony of the arresting officers, Harrison voluntarily left his home to speak with them when they arrived. The officers did not inform Harrison that he was under arrest. Although Harrison was subsequently arrested, he has presented nothing to indicate that the officers physically restrained him at the time he made the statements, or told him that he was required to answer questions. A defendant's subjective belief that he was not free to leave and was required to answer questions is not dispositive.<sup>18</sup> An objective assessment of the totality of the circumstances indicates that Harrison was not under arrest or in custody at the time he made the

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<sup>11</sup> *Id.*

<sup>12</sup> *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

<sup>13</sup> *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

<sup>14</sup> *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999).

<sup>15</sup> *Id.*

<sup>16</sup> See *Mendez, supra* at 383-384.

<sup>17</sup> *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993).

<sup>18</sup> *People v Coomer*, 245 Mich App 206, 220; 627 NW2d 612 (2001).

oral and written statements.<sup>19</sup> Thus, the officers were not required to give Harrison *Miranda* warnings prior to questioning him, and his statements were admissible.

#### D. Ineffective Assistance

Harrison argues that counsel's failure to object to the introduction of his statements constituted ineffective assistance. However, "[b]ecause there was no error in admitting defendant's statement, defense counsel was not ineffective for failing to challenge the admission of the statement, because defense counsel is not required to make motions that have no merit."<sup>20</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

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<sup>19</sup> *Id.*; *Zahn, supra*.

<sup>20</sup> *People v Ish*, 252 Mich App 115, 118-119; 652 NW2d 257 (2002).